

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of GLOBAL CAPITAL TRADING
5 LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff
6 on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
7 Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the
8 National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

9 **JURISDICTION & VENUE**

10 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
11 a resident of California, seeks relief on behalf of a Class, which will result in at
12 least one class member belonging to a different state than that of Defendant, a
13 Florida company. Plaintiff also seeks up to \$1,500.00 in damages for each call in
14 violation of the TCPA, which, when aggregated among a proposed class in the
15 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
16 Therefore, both diversity jurisdiction and the damages threshold under the Class
17 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

18 3. Venue is proper in the United States District Court for the Northern
19 District of California pursuant to 28 U.S.C. § 1391(b) and because Defendant does
20 business within the State of California and Plaintiff resides within the County of
21 Alameda.

22 **PARTIES**

23 4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”),
24 is a corporation of the State of California, whose principal place of business is in
25 the county of Alameda and is a “person” as defined by 47 U.S.C. § 153 (39).

26 5. Defendant, GLOBAL CAPITAL TRADING LLC (“Defendant”) is a
27 business loan company, and is a “person” as defined by 47 U.S.C. § 153 (39).

28 6. The above named Defendant, and its subsidiaries and agents, are

collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

8. Beginning on or about September 11, 2017, Defendant contacted Plaintiff on Plaintiff’s cellular telephone numbers ending in -6147 and -7210, in an attempt to solicit Plaintiff to purchase Defendant’s services.

9. Defendant used an “automatic telephone dialing system” as defined by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

10. Defendant contacted or attempted to contact Plaintiff from telephone numbers 786-286-0686, 201-433-4440, 971-319-8271 and 844-980-6800 confirmed to be Defendant’s number.

11. Defendant’s calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

12. During all relevant times, Defendant did not possess Plaintiff’s “prior express consent” to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on its cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

1 person had not previously consented to receiving such
2 calls within the four years prior to the filing of this
3 Complaint

4 21. The class concerning the National Do-Not-Call violation (hereafter
5 “The DNC Class”) is defined as follows:

6 All persons within the United States registered on the
7 National Do-Not-Call Registry for at least 30 days, who
8 had not granted Defendant prior express consent nor had
9 a prior established business relationship, who received
10 more than one call made by or on behalf of Defendant
11 that promoted Defendant’s products or services, within
12 any twelve-month period, within four years prior to the
13 filing of the complaint.

14 22. Plaintiff represents, and is a member of, The ATDS Class, consisting
15 of all persons within the United States who received any collection telephone calls
16 from Defendant to said person’s cellular telephone made through the use of any
17 automatic telephone dialing system or an artificial or prerecorded voice and such
18 person had not previously not provided their cellular telephone number to
19 Defendant within the four years prior to the filing of this Complaint.

20 23. Plaintiff represents, and is a member of, The DNC Class, consisting
21 of all persons within the United States registered on the National Do-Not-Call
22 Registry for at least 30 days, who had not granted Defendant prior express consent
23 nor had a prior established business relationship, who received more than one call
24 made by or on behalf of Defendant that promoted Defendant’s products or services,
25 within any twelve-month period, within four years prior to the filing of the
26 complaint.

27 24. Defendant, its employees and agents are excluded from The Classes.
28 Plaintiff does not know the number of members in The Classes, but believes the
Classes members number in the thousands, if not more. Thus, this matter should

1 be certified as a Class Action to assist in the expeditious litigation of the matter.

2 25. The Classes are so numerous that the individual joinder of all of its
3 members is impractical. While the exact number and identities of The Classes
4 members are unknown to Plaintiff at this time and can only be ascertained through
5 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
6 The Classes includes thousands of members. Plaintiff alleges that The Classes
7 members may be ascertained by the records maintained by Defendant.

8 26. Plaintiff and members of The ATDS Class were harmed by the acts of
9 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
10 and ATDS Class members via their cellular telephones thereby causing Plaintiff
11 and ATDS Class members to incur certain charges or reduced telephone time for
12 which Plaintiff and ATDS Class members had previously paid by having to retrieve
13 or administer messages left by Defendant during those illegal calls, and invading
14 the privacy of said Plaintiff and ATDS Class members.

15 27. Common questions of fact and law exist as to all members of The
16 ATDS Class which predominate over any questions affecting only individual
17 members of The ATDS Class. These common legal and factual questions, which
18 do not vary between ATDS Class members, and which may be determined without
19 reference to the individual circumstances of any ATDS Class members, include,
20 but are not limited to, the following:

21 a. Whether, within the four years prior to the filing of this
22 Complaint, Defendant made any telemarketing/solicitation call
23 (other than a call made for emergency purposes or made with
24 the prior express consent of the called party) to a ATDS Class
25 member using any automatic telephone dialing system or any
26 artificial or prerecorded voice to any telephone number
27 assigned to a cellular telephone service;

28 b. Whether Plaintiff and the ATDS Class members were damaged

1 thereby, and the extent of damages for such violation; and

2 c. Whether Defendant should be enjoined from engaging in such
3 conduct in the future.

4 28. As a person that received numerous telemarketing/solicitation calls
5 from Defendant using an automatic telephone dialing system or an artificial or
6 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
7 claims that are typical of The ATDS Class.

8 29. Plaintiff and members of The DNC Class were harmed by the acts of
9 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
10 and DNC Class members via their telephones for solicitation purposes, thereby
11 invading the privacy of said Plaintiff and the DNC Class members whose telephone
12 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
13 members were damaged thereby.

14 30. Common questions of fact and law exist as to all members of The
15 DNC Class which predominate over any questions affecting only individual
16 members of The DNC Class. These common legal and factual questions, which do
17 not vary between DNC Class members, and which may be determined without
18 reference to the individual circumstances of any DNC Class members, include, but
19 are not limited to, the following:

20 a. Whether, within the four years prior to the filing of this
21 Complaint, Defendant or its agents placed more than one
22 solicitation call to the members of the DNC Class whose
23 telephone numbers were on the National Do-Not-Call Registry
24 and who had not granted prior express consent to Defendant and
25 did not have an established business relationship with
26 Defendant;

27 b. Whether Defendant obtained prior express written consent to
28 place solicitation calls to Plaintiff or the DNC Class members'

1 telephones;

2 c. Whether Plaintiff and the DNC Class member were damaged
3 thereby, and the extent of damages for such violation; and

4 d. Whether Defendant and its agents should be enjoined from
5 engaging in such conduct in the future.

6 31. As a person that received numerous solicitation calls from Defendant
7 within a 12-month period, who had not granted Defendant prior express consent
8 and did not have an established business relationship with Defendant, Plaintiff is
9 asserting claims that are typical of the DNC Class.

10 32. Plaintiff will fairly and adequately protect the interests of the members
11 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
12 class actions.

13 33. A class action is superior to other available methods of fair and
14 efficient adjudication of this controversy, since individual litigation of the claims
15 of all Classes members is impracticable. Even if every Classes member could
16 afford individual litigation, the court system could not. It would be unduly
17 burdensome to the courts in which individual litigation of numerous issues would
18 proceed. Individualized litigation would also present the potential for varying,
19 inconsistent, or contradictory judgments and would magnify the delay and expense
20 to all parties and to the court system resulting from multiple trials of the same
21 complex factual issues. By contrast, the conduct of this action as a class action
22 presents fewer management difficulties, conserves the resources of the parties and
23 of the court system, and protects the rights of each Classes member.

24 34. The prosecution of separate actions by individual Classes members
25 would create a risk of adjudications with respect to them that would, as a practical
26 matter, be dispositive of the interests of the other Classes members not parties to
27 such adjudications or that would substantially impair or impede the ability of such
28 non-party Class members to protect their interests.

35. Defendant has acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class

36. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-35.

37. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

38. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

39. Plaintiff and the ATDS Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

40. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-35.

41. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,

1 and in particular 47 U.S.C. § 227 (b)(1)(A).

2 42. As a result of Defendant's knowing and/or willful violations of 47
3 U.S.C. § 227(b), Plaintiff and the ATDS Class members are entitled an award of
4 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
5 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

6 43. Plaintiff and the Class members are also entitled to and seek injunctive
7 relief prohibiting such conduct in the future.

8 **THIRD CAUSE OF ACTION**

9 **Negligent Violations of the Telephone Consumer Protection Act**

10 **47 U.S.C. §227(c)**

11 **On Behalf of the DNC Class**

12 44. Plaintiff repeats and incorporates by reference into this cause of action
13 the allegations set forth above at Paragraphs 1-35.

14 45. The foregoing acts and omissions of Defendant constitute numerous
15 and multiple negligent violations of the TCPA, including but not limited to each
16 and every one of the above cited provisions of 47 U.S.C. § 227(c), and in particular
17 47 U.S.C. § 227 (c)(5).

18 46. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c),
19 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory
20 damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

21 47. Plaintiff and the DNC Class members are also entitled to and seek
22 injunctive relief prohibiting such conduct in the future.

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FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class

48. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-35.

49. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

50. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)*.

51. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

1 Respectfully Submitted this 16th Day of January, 2020.

2 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

3
4 By: /s/ Todd M. Friedman

5 Todd M. Friedman

6 Law Offices of Todd M. Friedman

7 Attorney for Plaintiff